

DOCUMENT RESUME

02891 - [A1953013]

[Claim for Compensation Due Murdered Retired Member's Spouse].
B-187743. July 7, 1977. 2 pp.

Decision re: Mattie Ruth Bailey; by Robert P. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Military Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Department of the Navy.

Authority: 10 U.S.C. 2771. 55 Comp. Gen. 1033. 34 Comp. Gen.
103. Shoemaker v Shoemaker, 263 F.2d 931 (6th Cir. 1959).
United States v. Kwasniewski, 91 F. Supp. 847 (E.D. Mich.
1950). McKinney v. McKinney (Docket Number 74-2292).

An appeal was made to the disallowance of a wife's
claim for arrears of retainer pay due her deceased husband. As
the wife was found guilty of being an accessory after the fact
to her husband's murder, she was not entitled to arrears of
member's pay. The prior settlement was sustained. (Author/DJM)

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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D C 20548

Quitty
N.B.

FILE: B-187743

DATE: JUL 7 1977

MATTER OF: Mattie Ruth Bailey

DIGEST: Murdered Navy member's wife, who was found guilty of being an accessory after the fact to his murder, is not entitled to receive arrears of pay due the member in the absence of evidence that she was not involved in the murder or that she did not participate in the murder with felonious or wrongful intent, since it is a fundamental rule of law that no man shall be permitted to profit by his own wrongful act.

This action is in response to a letter dated April 29, 1977, from the attorney for Mattie Ruth Bailey, Route 1, Box 11, DeWitt, Virginia 23340, which constitutes an appeal from the settlement of our Claims Division dated April 22, 1977, disallowing her claim for arrears of retainer pay due to her husband, Petty Officer First Class Harold Bailey, Jr., USN (Retired) (Deceased).

Mr. Bailey died on March 26, 1975, as the result of multiple gunshot wounds. On October 22, 1975, in the Circuit Court of Dinwiddie County, Virginia, the claimant was found guilty of being an accessory after the fact in the murder of her husband.

Our Claims Division disallowed the claim for the reason that a lack of felonious intent was not established by the claimant in connection with the killing of her husband. In the letter of appeal, the correctness of that determination has been questioned.

Section 2771 of title 10, United States Code, provides that in the settlement of the accounts of a deceased member of the armed forces, amounts due in the form of unpaid pay and allowances shall be paid to the member's surviving spouse, in the absence of a written designation by him to the contrary. However, it has uniformly been held that it is against public policy to permit the payment by the Government of arrears of pay, compensation or other benefits to a beneficiary who feloniously or wrongfully participates in the death of the person upon whose death such payments become due. An indication of felonious or wrongful intent by the beneficiary bars payment, even though such beneficiary is found guilty only of a misdemeanor, is acquitted or is not even prosecuted in state criminal proceedings.

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relating to the homicide, since it is a fundamental rule of law that no man shall be permitted to profit by his own wrongful act. See 55 Comp. Gen. 1033 (1976) involving the case McKinney v. McKinney (Docket Number 74-2292) in which the United States Court of Appeals on December 19, 1975, affirmed without published opinion an unreported decision of the U. S. District Court for South Carolina, 530 F. 2d 968 (1975). See also 34 Comp. Gen. 103 (1954); Shoemaker v. Shoemaker, 263 F. 2d 931 (8th Cir. 1959); United States v. Kwasniowski, 91 F. Supp. 847 (E.D. Mich. 1950).

In the present case the records available to us do not reveal the facts involved in the death of Harold Bailey, Jr. However, since the claimant was found guilty of aiding in the commission of that murder, we cannot authorize payment to her of the amounts due Mr. Bailey at the time of his death in the absence of a showing that she did not participate intentionally and wrongfully in his death.

Accordingly, the settlement of our Claims Division is sustained.

R.F.KELLER

Deputy Comptroller General
 of the United States